class meets, and the work by sections will decrease the difficulty of getting the books of reference. It is to be hoped the Boston University will meet with all success in its new method.

MISCONDUCT OF A JUDGE — ITS INFLUENCE ON THE JURY. — The untamed State of Washington furnishes a rather amusing application of the constitutional provision prohibiting a judge from commenting on matters of fact to the jury. His honor passed his time in perusing a newspaper during the testimony of the defendant, and while the defendant's attorney was endeavoring to impeach the testimony of a witness for the prosecution the court exchanged smiles, pleasant observations, and candy with the said witness. This, the upper court not unreasonably holds, comes too near, especially in a capital case, to an intimation that the defendant's view of the matter was of small import, and the court ventures to hope that such an occasion for reversal will not very often arise.

PRIVILEGE OF WITNESSES IN FEDERAL COURTS. — In the April number of the REVIEW, Mr. Louis M. Greeley discussed the case of *Counselman* v. *Hitchcock*, which arose through the refusal of a witness, summoned in an investigation under the interstate commerce law, to answer certain questions, on the ground that he would criminate himself by so doing. The District and Circuit Courts for Northern Illinois ruled that the witness must answer, inasmuch as by Section 860 of the Revised Statutes the evidence could not be used against him in any criminal proceeding, and therefore his constitutional rights were not invaded. The question never having arisen in the Supreme Court, Mr. Greeley discusses it on principle. He says in substance that the fifth Amendment guarantees the privilege of a witness against compulsory, self-accusatory evidence; that this privilege may be abrogated by statute if the statute affords the witness complete amnesty as to the crime concerning which he was compelled to testify; but that Section 860 of the Revised Statutes does not do this, inasmuch as it does not prevent scources of evidence disclosed by his evidence from being used against him; the obvious conclusion being that under the present state of the law a witness may refuse to testify if his answer will tend to criminate himself.

It is interesting to note that the case has just been decided on appeal by the Supreme Court of the United States substantially in accordance with the principles above stated. The decisions of the District and Circuit Courts are reversed. The court says: "It is a reasonable construction, we think, of the constitutional provision [that "no person . . . shall be compelled in any criminal case to be a witness against himself"] that the witness is protected 'from being compelled to disclose the circumstances of his offence, the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his connection, without using his answers as direct admissions against him.'[1] It is quite clear that legislation cannot abridge a constitutional privilege, and that it cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect. . . . In view of the constitu-

[1] *Emery's Case*, 107 Mass. 172, 182.

tional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offence to which the question relates."

In the course of the opinion the court considers the provisions of the Massachusetts Constitution, that the witness shall not be "compelled to accuse, or furnish evidence against, himself," and of the New York Constitution, which is in the same language as that of the Fifth Amendment. The conclusion is reached that inasmuch as the general purpose of these constitutional provisions is to prohibit compulsory self-accusatory evidence, "the liberal construction which must be placed upon constitutional provisions for the protection of personal rights would seem to require that the constitutional guaranties, however differently worded, should have, as far as possible, the same interpretation," and that "there is really, in spirit and principle, no distinction arising out of such difference of language."

TROVER FOR CONVERSION BEFORE PLAINTIFF'S TITLE HAS ACCRUED.— The case of *Bristol and West of England Bank* v. *Midland Railway Co.* [1891], 2 Q. B. 253, offers food for reflection. The proposition which it would seem that the Court of Appeal intended to lay down, is that an action of trover or detinue will lie against a bailee for non-delivery of goods, even though they have been wrongfully disposed of to a third party before the plaintiff's title accrued.

Considering the case first as an action of trover, the proposition is certainly startling that A, who has got title to goods, can demand them from, and on refusal sue for conversion, B, who has never had them in his possession since the plaintiff owned them. Opposed to such a contention is Lord Blackburn's dissenting opinion in *Goodman* v. *Boycott*, 2 B. & S. 1, and a statement in Clerk & Lindsell on Torts, p. 183, that "there cannot be a conversion by demand and refusal, unless at the time of the demand the defendant had it in his power to return the property."

The decision might be sustained on the authority of *Franklin* v. *Neate*, 13 M. & W. 481 (a case of judicial legislation founded on no principle), that a purchaser from a bailor may proceed in his own name against a bailee. This seems to be the ground of Lord Coleridge's decision in the Queen's Bench, but Lord Justice Lindley prefers to rest the case on a different principle. Moreover, an examination of the case seems to indicate clearly that the conversion sued on is not the wrongful disposal of the goods while the bailor retained title, but a conversion arising from the refusal of the plaintiff's demand to produce chattels converted before he had any interest in them. Further, if the action were founded on the earlier act of conversion, the plaintiff would be liable to be met by all the defences which could be raised against his assignor,—a possibility certainly not contemplated by the court.

The ground of the decision in the Court of Appeals—and it meets with the approval of Sir F. Pollock—is the broad principle that "a man who wrongfully parts with goods is liable as if he had them still in his possession. *Qui dolo desiit possidere pro possidente damnatur.*" Reducing this to its lowest terms would seem to bring it down to that shifty thing, estoppel; and what is the estoppel? The answer must be